

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED REGULATION FOR ENERGY EFFICIENCY AND CO-BENEFITS ASSESSMENT OF LARGE INDUSTRIAL FACILITIES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting a regulation affecting large industrial stationary facilities located in California. The primary purpose of the proposed regulation is to gather information on the energy efficiency improvement opportunities that are available to California's largest industrial stationary sources of greenhouse gases (GHG), and to quantify the associated potential emission reductions for GHG, criteria pollutants, and toxic air contaminants.

DATE: July 22, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., July 22, 2010, and may continue at 8:30 a.m., on July 23, 2010. This item may not be considered until July 23, 2010. Please consult the agenda for the hearing, which will be available at least 10 days before July 22, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of California Code of Regulations (CCR), title 17, subchapter 10, article 2.1. Energy Efficiency and Co-Benefits Assessment of Large Industrial Facilities, sections 95150, 95151, 95152, 95153, 95154, 95155, 95156, 95157, 95158, 94159, 95160, 95161, and 95162.

Background: In 2006, the Governor signed California's Global Warming Solutions Act (AB 32), which set the State's GHG reduction goals into law. AB 32 directed the ARB to begin developing discrete early actions to be made enforceable by 2010 and to prepare a Scoping Plan that will identify how best to reach the 2020 greenhouse gas limit. The Board approved the Scoping Plan in December 2008. In the Scoping Plan, the Board outlined a comprehensive set of actions to reduce GHG emissions. This proposed regulation is one of the many measures identified in the Scoping Plan. The goals for the proposed regulation are to:

- 1) for high GHG emitting stationary industrial facilities in California, identify the facility's energy consumption and the associated GHG, criteria pollutant, and toxic air contaminant emissions;
- 2) determine potential energy efficiency improvement opportunities for reducing GHG, criteria pollutant, and toxic air contaminant emissions; and
- 3) identify potential future actions for obtaining further reductions.

Industrial facilities in California are a large source of GHG emissions. In 2008, these facilities emitted approximately 160 million metric tonnes of carbon dioxide equivalent (MMTCO₂e) emissions annually or about one-third of the total GHG emissions from all sources in California. Information gathered from the implementation of the proposed regulation will be a valuable resource in determining what GHG emission reduction opportunities are available as well as what criteria pollutant and toxic air contaminant co-benefits might be realized. ARB staff will use these data to inform ARB's GHG, criteria pollutant, and toxic air contaminant emission reduction programs, and the next update to the Scoping Plan. Additionally, the information will help California's largest stationary sources of GHG emissions consider potential co-benefits when deciding on actions to comply with other GHG programs, such as a cap-and-trade program.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

ARB staff is proposing a regulation (article 2.1, subchapter 10, title 17, sections 95150 to 95162, CCR) that will subject the largest stationary sources of GHG emissions in California to provide information on the energy efficiency improvement opportunities that are available, and quantify the associated emission reductions for GHG, criteria pollutants, and toxic air contaminants.

Applicability

The proposed regulation would apply to stationary sources that emit GHG emissions of greater than 0.5 MMTCO₂e annually and transportation fuel refineries and cement plants that emit GHG emissions of greater than 0.25 MMTCO₂e annually. Besides refineries and cement plants, these facilities include oil and gas extraction and transmission facilities, electricity generation facilities, mineral plants, and hydrogen production facilities. Based on the emissions threshold and the GHG emissions data collected for the 2008 calendar year pursuant to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, sections 95100 through 95133, title 17, CCR (Mandatory GHG Reporting Regulation), approximately 60 facilities in five industrial sectors will be affected. The industrial sectors and the number of facilities include:

- petroleum refineries (18 facilities)
- oil and gas extraction and transmission facilities (6 facilities)
- electricity generating facilities (18 facilities)
- cement plants and mineral plants (11 facilities)
- hydrogen plants (3 facilities)

The combined total GHG emissions at these 60 facilities was about 70 MMTCO₂e in 2008 or about 45 percent of the total emissions from the industrial sector. These facilities are located throughout California with the largest numbers found in the Southern San Joaquin Valley, and in and around Los Angeles and San Francisco.

Analysis of Facility Energy Consumption and Emissions

Facility operators would be required to provide a process flow diagram, the name and description of the processes and equipment used, and the facility-wide fuel and electricity consumption for the 2009 calendar year. The proposed regulation does not require facilities to create a new emissions inventory. Instead, facilities would provide their 2009 calendar year emissions of GHG, criteria pollutants, and toxic air contaminants that were reported for the Mandatory GHG Reporting Regulation (for GHG) and local air district reporting programs (for criteria pollutants and toxic air contaminants). The GHG emissions data reported will be validated by a third party verification process that is required by the Mandatory GHG Reporting Regulation. The criteria pollutant and toxic air contaminant emission data will be verified by ARB and district staff as part of their existing data validation and review programs.

Analysis of Potential Energy Efficiency Improvements

Facility operators would be required to conduct a comprehensive assessment of potential energy efficiency improvement projects that are possible at the facility and the associated impacts that would occur if the projects were implemented. The assessment would include a description of each project, the types of processes and equipment involved, preliminary estimates for costs, timing, status (if the project is being implemented), project life, energy and cost savings, potential emission reductions (GHG, criteria pollutant and toxic air contaminant), district permitting impacts, and other project related impacts.

Submittal of a Comprehensive Report

Facility operators would be required to submit a report, called the Assessment Report, containing the facility's energy consumption and emissions analysis and the energy efficiency improvement analysis. The Assessment Reports would be submitted to ARB by the end of 2011, and would then undergo an internal ARB review process to determine completeness and validity. If a report is deemed to be incomplete, then a new assessment, conducted by an approved third party assessor, may be required. Completed assessment reports submitted to the ARB would be made publicly available on an ARB's Climate Change website in April 2012. Staff will also develop a draft report, to be released in mid 2012, with preliminary findings and recommendations. This draft report will be used as a starting point for discussion with all stakeholders on opportunities for further emission reductions.

Exemptions

The requirements of the proposed regulation would not apply to combined-cycle electricity generating facilities built after 1995. These facilities are considered to have the most efficient power generation process and equipment available, as determined by the California Energy Commission.

The proposed regulation also includes an exemption for petroleum refineries that do not produce transportation fuels, such as asphalt plants, because their processes are less energy intensive, emissions are typically less than transportation fuel refineries, and there are a limited number of facilities.

The proposed regulation would also exempt mobile source combustion sources and portable equipment. The Scoping Plan measure for this regulation intended it to focus on stationary sources only, and mobile and portable equipment are not required reporting sources for the Mandatory GHG Reporting Regulation.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations at this time.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposed regulatory amendments and which also describes the basis of the proposed action in more detail. The Staff Report is entitled, "Staff Report: Initial Statement of Reasons for the Proposed Rulemaking – Proposed Regulation for Energy Efficiency and Co-Benefits Assessment of Large Industrial Facilities."

Copies of the ISOR with the full text of the proposed regulatory language may be accessed on the ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on July 22, 2010.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB's website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact person, Lisa Williams, Air Pollution Specialist, at (916) 327-1498.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, and Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the Staff Report, and all subsequent regulatory documents, including the FSOR, when completed, are also available on the ARB website for this rulemaking at <http://www.arb.ca.gov/regact/2010/energyeff10/energyeff10.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

Costs to Businesses and Private Individuals

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed amendments are presented below.

The affected businesses are the largest industrial stationary sources of GHG emissions in California. The majority of the businesses affected by the proposed regulation are large multi-national corporations. While we do not expect these businesses to be adversely affected by the costs of the proposed regulation, there will be costs associated with conducting the assessment, compiling the data, and submitting the report to the ARB. The specific cost for an individual facility subject to the regulation will generally depend on the complexity of the facility and ranges from \$78,000 to \$425,000. Staff estimates the total costs for compliance with the proposed regulation to be approximately \$14 million over a period of about 16 to 18 months.

Therefore, the Board's initial determination is that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states."

The profitability of California businesses affected by the proposed one-time cost of the proposed regulation should be minimal. Overall, affected businesses will be able to absorb the costs of the proposed regulation with no significant adverse impacts on their profitability. Because the proposed regulation would not alter significantly the profitability of most businesses, we do not expect a noticeable change in employment, business creation, elimination, or expansion, and business competitiveness in California for these industries.

The ARB staff has considered alternatives to the proposed regulation and evaluated the economic impact on businesses. None of the alternatives considered would achieve the objectives of the proposed regulation at a lower cost. The alternatives that staff considered are described in more detail in the Staff Report.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action would not affect small businesses because, together with its affiliates, they either exceed 100 employees or have average annual gross receipts greater than \$12 million over the previous three tax years.

In accordance with Government Code section 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings in federal funding to the State, or costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government code or other nondiscretionary cost or savings imposed upon local agencies.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the proposed regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

Costs to Local and State Government Agencies

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would create no costs to federal agencies.

The State, and almost all local, agencies do not own any electricity generating facilities, refineries, oil and gas extraction fields, cement plants, hydrogen plants, or mineral plants that are subject to this regulation.

No fiscal impact is expected on any local entity or program. The Los Angeles Department of Water and Power (LADWP) owns three electricity generating facilities that are subject to the proposed regulation. In addition, the Puente Hill landfill electricity generating facility is operated by the Los Angeles County Sanitation District. These facilities operate as not-for-profit corporations; thus their compliance costs, about

\$78,000 per facility or about \$300 thousand dollars combined, are included in the total costs of the proposed regulation. Because these facilities recover any costs from their client via service fees, local tax payers would not be impacted through fiscal budgets. ARB will incur minimum costs to administer the proposed regulation. These costs would be met with existing resources. No other State agencies will be affected. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on June 7, 2010. To be considered by the Board, written comments, not physically submitted at the meeting must be submitted on or after June 7, 2010 and received **no later than 12:00 noon, Pacific Standard Time, July 21, 2010**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 38510, 38530, 38560, 38562, 39600, 39601, 39659, and 41511. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 38501, 38505, 38510, 38530, 38550, 38551, 38560, 38561, 38562, 38563, 39003, 39500, 39600, 39601, 39659, and 41511.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with §11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

To request a special accommodation or language needs for any of the following:

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, Large print) or another language.
- A disability-related reasonable accommodation.

Please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Para solicitar alguna comodidad especial o necesidad de otro idioma para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia
- Tener documentos disponibles en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de diez (10) días laborales antes del día programado para la audiencia. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

CALIFORNIA AIR RESOURCES BOARD

/s/

James N. Goldstene
Executive Officer

Date: May 25, 2010

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs see our website at www.arb.ca.gov.